

CHAPTER NO. 301

HOUSE BILL NO. 1275

By Representatives Rhinehart, Ferguson

Substituted for: Senate Bill No. 836

By Senators Crutchfield, Cohen, Crowe, Davis, Cooper, Haun, Williams, Leatherwood, Person

AN ACT to amend Tennessee Code Annotated, Section 8-35-111(b)(3) and Section 49-2-208, relative to salary reduction plans for employees of local Boards of Education.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 8-35-111(b)(3), is amended by deleting the figures "401(k) and 457" wherever the same may appear, and by substituting instead the figures "401(k), 403(b) and 457".

SECTION 2. Tennessee Code Annotated, Section 8-35-111(b)(3), is further amended by deleting from the second sentence thereof the figures and words "401(k) or 457", and by substituting instead the figures and words "401(k), 403(b) or 457".

SECTION 3. Tennessee Code Annotated, Section 49-2-208, is amended by deleting the section in its entirety and by substituting instead the following:

(a) A local Board of Education is authorized to enter into written agreements with any of its employees to pay, at the request of its employees, a part of the incomes of such employees for the purchase of annuity or other contracts which meet the requirements of § 403(b) of the Internal Revenue Code. The amount of the reduction may not exceed the amount excludable from income under § § 403(b), 415, or 402(g) of the Internal Revenue Code and shall be considered a part of the employee's salary for all purposes other than federal income tax. Such annuity or other contracts shall only be purchased from:

(1) An insurance or annuity company authorized to do business in this State; or

(2) Any broker dealer licensed to sell shares of regulated investment companies to be held in custodial accounts as authorized by § 403(b)(7) of the Internal Revenue Code.

(b) A local Board of Education which elects to provide a 403(b) plan pursuant to the provisions of this section must extend membership eligibility in the plan to all of its teachers, or to all of its full-time non-teachers, or both. If the board extends membership eligibility in the plan to any teacher, then all of its teachers must be given the option of participating in the plan under the same terms and conditions. If the board extends membership eligibility in the plan to any full-time non-teacher, then all of its full-time non-teachers must be given the option of participating in the plan under the same terms and conditions. The board may further extend membership eligibility in the plan to its part-time non-teachers, provided that all of its part-time non-teachers are given the option of participating under the same terms and conditions. For purposes of this subsection, "teacher" means those persons included within the definition in § 8-

34-101(46) and who are participating members of the Tennessee Consolidated Retirement System. In addition, the phrase "same terms and conditions" shall include, but shall not be limited to, any employer matching of contributions made by the local Board of Education pursuant to subsection (e)(1) hereof.

(c) Any agreement entered into between a local Board of Education and an employee pursuant to this section shall specify the amount and the effective date of the reduction, be legally binding and irrevocable with respect to the amounts earned while the agreement is in effect, and state that the agreement shall impose no liability nor responsibility whatsoever on the board except to show that the payment have been remitted for the purposes for which deducted.

(d) Upon entering into such an agreement, the board shall thereafter pay the deductions while such annuity or other investment contract is in force and while the employee is actively employed by the board. Upon advance written notice duly given to the board by the employee, the board shall make any changes in the manner or amount of deductions required under the terms of the agreement and shall stop such deductions when so notified in advance by the employee.

(e) Notwithstanding any other provision of law to the contrary, any compensation deferred under this section shall be considered part of an employee's compensation for purposes of any other employee retirement, pension, or benefit program. No deferral of income under this section shall effect a reduction of any retirement, pension, or other benefit program provided by law.

(f)(1) Each local Board of Education that administers the purchase of annuity or other contracts under this section may elect to provide for employer matching of contributions made by employees hereunder, provided such employer matching is included in the board's budget and is ratified by the local Board of Education and the appropriate local legislative body. Before making such contributions, the board shall select, through competitive bidding and contracts, one (1) or more insurance companies or mutual fund managers from which contracts are to be purchased for the purpose of depositing and investing employer contributions. In evaluating such bids, the board shall consider:

(A) The financial condition and operating performance of the entity;

(B) The long term performance of the investment products offered by the entity; and

(C) The fund expense ratios, administrative fees, and any other charges or penalties affecting investment return.

(2) Any entity selected to receive and administer employer contributions must meet the following minimum qualifications and standards:

(A) The entity must offer a range of investment choices, including, at a minimum, a money market fund, a bond fund and a stock fund;

(B) The entity shall not apply sales loads, deferred sales charges, surrender fees, or early withdrawal penalties. Further, the combined total of any mortality and expense risk fees and separate account charges imposed by the entity prior to annuitization of the

account balance shall not exceed one percent (1%) of assets on an annualized basis;

(C) The entity shall not impose minimum contribution requirements on employees or the board; and

(D) The entity must have been in business for at least five (5) years and have a minimum of one billion dollars (\$1,000,000,000) in assets. If the entity is an insurance company, the entity must also be rated by two (2) or more nationally recognized rating services as being within the three highest rating categories for financial condition and operating performance.

(3) Employer contributions made under this subsection shall not be considered part of an employee's compensation for purposes of any other employee retirement, pension, or benefit program.

(g) Any annuity or other contract entered into under the authority of this section shall conform to all applicable laws, rules and regulations of the Internal Revenue Service which will qualify such contracts for income tax benefits provided for under § 403(b) of the Internal Revenue Code of 1986, or any subsequent corresponding Internal Revenue Code of the United States, as from time to time amended.

SECTION 4. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: May 20, 1999



JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES



JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 27th day of May 1999



DON S. INGVALDSEN, GOVERNOR